

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

**PENNZOIL-QUAKER STATE COMPANY,
d/b/a SOPUS PRODUCTS¹**

Employer

and

Case No. 16-RC-10703

**UNITED STEELWORKERS INTERNATIONAL
UNION, LOCAL 13-1, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. The Petition, Issues Presented, and Parties' Positions

Petitioner seeks to represent all operators, warehouse persons, forklift operators and leadman employed by the Employer at its Regional Distribution Center located in Houston, Texas and to exclude all other employees including office clerical, technical employees, professional employees, confidential employees, guards, and supervisory employees as defined in the Act. Employer contends that the petitioned-for unit is inappropriate because it does not include ten additional employees that it contends must be included in the appropriate bargaining unit: the dispatcher/relief driver, the relief driver/warehouse employee, four Bulk Truck Drivers (BTDs) and four Package Truck Drivers (PTDs).

¹ The Employer's name in the caption appears as amended at the hearing.

The issues at hand are: (1) whether the composition of the unit should include the Employer's drivers; and (2) whether the dispatcher/relief driver and relief driver/warehouse employee must be included in any unit found appropriate herein.

Both parties stipulate that the appropriate unit should include all operators, warehouse persons, forklift operators and leadmen; and that the office clerical, technical, professional, confidential employees, guards and supervisors as defined in the Act should be excluded. They also stipulate that Petitioner is a labor organization within the meaning of the Act, that Petitioner claims to represent the employees in the petitioned-for unit, but the Employer declines to recognize Petitioner as the collective bargaining representative of those employees. The parties further stipulate that there is no collective bargaining agreement covering any of the employees Petitioner seeks to represent and that there is no contract bar to this proceeding. Petitioner did state that it declines to proceed to an election in a unit larger than or different from the petitioned-for unit.

II. The Regional Director's Findings

I have considered the evidence adduced during the hearing and the arguments advanced by both parties. For the reasons set forth below, I find that the employees sought to be included by the Employer do not share a sufficient community of interest with the petitioned-for unit as to compel their inclusion the petitioned-for unit. Accordingly, I will direct an election in the petitioned-for unit consisting of approximately 36 employees.

To lend context to my discussion of the issues, I will provide an overview of the Employer's operations and supervisory structure. Then, I will discuss the background evidence. Finally, I will relate the reasoning that supports my findings.

III. Overview of Employer's Operations and Supervisory Structure

The Employer's facility involved in this proceeding is a warehouse operation receiving and storing merchandise that is shipped to customers. Prior to September 2005 the facility had about 45 employees and no truck driving operations.

Before September 2005 the Employer maintained a separate distribution center in Houston, Texas (known as the Houston Distribution Center or HDC) that was used for the delivery and sale of motor oil materials, mostly Pennzoil-Quaker State products, to customers such as Wal-Mart, Jiffy Lube and Quick Cars. The HDC had a truck driving delivery operation. In September 2005 the HDC was merged with the warehouse operation and the facility became known as the Houston Regional Distribution Center (HRDC), the facility involved herein. There are currently about 56 employees, including managers, employed in the HRDC.

Jeff Wing is manager of the facility. All petitioned-for employees, generally described as warehouse employees, are supervised by Jesse Gomez and Tanual Graggs. Gomez supervises the first shift (6:00 a.m. to 2:30 p.m.) and Graggs supervises the second shift (3:00 p.m. to 11:30 p.m.). There are 15 warehouse operators and six leadmen on the first shift and 11 warehouse operators and four leadmen on the second shift. Both Gomez and Graggs report directly to Wing. On the distribution side of the operation (after the September merger) Tony Ezernack is the HDC manager who manages the ten employees at issue – dispatcher/relief driver, relief driver/warehouse, four BTDs and four PTDs. Ezernack also reports directly to Wing.

IV. Background

A. Warehouse Employees

Warehouse employees perform typical warehouse functions of receiving merchandise for storage at the facility and retrieving and staging the merchandise for subsequent loading on vehicles for delivery. For example, a warehouse operator receives a “pick sheet” from the leadman. The pick sheet tells the operator what merchandise to pick, where it is located in the facility and where the merchandise is to be staged. After the merchandise is staged, the responsibility for loading the vehicle belongs to the driver. On those occasions where there is a problem with a load, e.g., a broken pallet, warehouse personnel may assist with loading and/or unloading of merchandise. Warehouse employees, who use forklifts to move merchandise throughout the facility, receive their daily orders from the warehouse leadmen. They also use handheld computers, “RF guns,” that read package labeling to keep track of warehouse inventory. A warehouse operator may be assigned to a specific area of the facility depending on customer demands (volume of business).

First shift warehouse employees generally arrive to work at 6:00 a.m., unless they are working overtime, in which case they arrive an hour or two early. However, overtime work is not a daily occurrence and varies from department to department within the facility. Second shift warehouse employees clock in at 3:00 p.m. Leadmen on each shift generally come in an hour before the scheduled work time. Warehouse employees wear uniforms with “Shell” on their shirts. They are not required to possess or maintain commercial driver’s licenses for employment with the Employer. All warehouse

employees including warehouse leadmen, are hourly paid, receiving from \$12.83 to \$18.20 per hour.

Warehouse employees begin their shifts with mandatory safety meetings conducted by their immediate supervisor, either Gomez or Graggs, depending on the shift. Ezernack conducts separate safety meetings for the drivers. The Employer also conducts monthly “town hall” meetings that are usually held at about 2 p.m. Warehouse employees are required to attend – second shift employees come in early to attend those meetings. Within the warehouse classification, loaders do perform order pulling tasks and order pullers do perform as loaders.

B. Distribution Employees

Mike Villanueva is the dispatcher/relief driver. His primary function is to dispatch the bulk trucks through operation of the “bulk inventory management” (BIM) system, a computer monitoring program. He forecasts deliveries for bulk customers, posts goods (billing customers based on BTD paperwork) and dispatches all the bulk trucks. He also serves as a relief driver. The forecasting delivery task is performed by inputting information received from the BTDs regarding the customer’s use of bulk product into the bulk inventory management system. After a customer’s history is developed, Villanueva uses the information to forecast when another bulk delivery will be needed.

Villanueva also operates the load-planning software program. This program organizes orders into the routes. Villanueva also runs the due list and orders the bulk for the tank trucks (i.e., generates purchase orders) that are used to fill the totes at the facility. Totes are 330-gallon bulk oil holders that are loaded on package trucks.

Villanueva is also required to maintain a commercial driver's license (CDL) and is "listed" as a driver by the Employer. His relief driving functions are generally limited to driving a truck to the Houston lube plant (HLP) located in Galena Park, Texas for the loading of bulk product for the totes back at the HRDC. On occasion, Villanueva will also dispatch the package trucks. These instances occur when package merchandise is also scheduled to be delivered to customers receiving bulk product. Some bulk trucks are designed to have a compartment for package materials, approximately 90 percent for bulk product and 10 percent for package materials. Villanueva handles the dispatch of these trucks with combination bulk and package loads.

Villanueva works in a cubicle. He operates a computer in the performance of his job. He performs 90 percent of his work in his cubicle. Thus, Villanueva's work consists of 90 percent administrative work and ten percent relief driving.

Phat Nguyen, a warehouse lead operator, also performs some of the dispatching functions for package truck drivers. As a part-time dispatcher, Nguyen's tasks are limited to reviewing package orders and assigning the orders to PTDs. Nguyen came to the HRDC from the HDC when it closed. Nguyen acquired package delivery experience during his employment at the HDC. Currently, Nguyen is assigned to customer John Deere/HDC. As such, he is responsible for dispatching and order processing, which includes pulling orders for bulk and package truck loads. Although Nguyen's immediate supervisor is Gomez, he reports any dispatching issues to Villanueva or Ezernack. Nguyen's current workload includes about 80 percent warehouse lead tasks and the remaining 20 percent as dispatcher for the package truck operation.

Randall Cook, the relief driver/warehouse employee has the primary responsibility of replacement truck driver, i.e., he fills in as a truck driver when a driver is on vacation or when the Employer's business dictates. Cook, who has a CDL, also drives to the HLP to refill the Employer's tank wagon that is used to refill totes at the facility. When not working as truck driver, Cook has the responsibility of performing warehouse operator tasks, i.e., gathering package merchandise from throughout the warehouse to stage for loading and delivery by the BTDs and/or PTDs. Cook spends 50 percent of his time performing relief driver duties and the other 50 percent performing warehouse operator tasks.

C. Truck Drivers

As noted above, there are two classifications of drivers at the facility, bulk truck drivers (BTDs) and package truck drivers (PTDs). All drivers are required to maintain CDLs and receive safety training regarding the operation of their vehicles. BTDs clock in at either 4:00 or 4:30 a.m., pick up their orders, check their tanker trucks and drive from the facility to collect their bulk product, which is located at the HLP, a facility approximately ten miles distance from the HRDC. They are required to arrive at the HLP by 5:00 a.m. On those occasions where a BTD has package merchandise to deliver, that merchandise is gathered by warehouse employees and placed in a staging area. The BTD, using a forklift or pallet jack, loads the package merchandise onto the truck before leaving the facility and heading to the HLP. Warehouse personnel do not arrive for work until 6:00 a.m. Consequently, the package merchandise is generally staged the night before for loading by the BTD the following morning.

PTDs are drivers that pick their loads of package merchandise from the staging areas at the facility. They clock in at 5:00 a.m., receive their orders and load their own trucks using forklifts or pallet jacks. As warehouse personnel do not arrive until 6:00 a.m., the package merchandise is gathered by warehouse personnel and staged for PTD loading the day before. Generally, by 5:45 a.m. the PTDs leave the facility to begin their deliveries. The only other time that drivers perform tasks at the facility, other than loading their trucks and performing their paperwork-related tasks, is if they volunteer to assist with the annual wall-to-wall inventory of the facility. The record reflects that drivers spent an overwhelming majority of their work time performing driving functions (only about four percent of their work time is spent on warehouse-related tasks).

All drivers wear uniforms with “Pennzoil-Quaker State” on their shirts. Drivers are hourly wage earners receiving from \$17.00 to \$20.00 per hour. All drivers, with the exception of the two relief drivers (dispatcher/relief driver and relief driver/warehouse employee) spend about 90 percent of their time away from the facility – loading bulk product and/or making deliveries at customer locations. To date, there has not been any interchange between drivers and warehouse employees nor have there been any transfers between these two general classifications, i.e., a warehouse employee has not become a driver and vice-versa. Drivers are not required to attend the Employer’s town hall meetings.

Warehouse employees and drivers share a common locker room and main restroom. They all are hourly paid employees receiving compensation every two weeks. Office staff and salaried employees at the HRDC are paid on the 1st and 15th of every month. The Employer offers all non-represented employees the same benefit choices.

V. Analysis

A. Appropriateness of Petitioned-For Unit

The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484 (2001). For a unit to be appropriate, the key question is whether the employees in that unit share a sufficiently strong community of interest. The Board first announced the community of interest concept in *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962). "In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *The Boeing Company*, 337 NLRB No. 24 (2001) (citations omitted). Further, it is well established that "[a] petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and in representation proceedings, the unit sought by the petitioner is always a relevant consideration." *The Lundy Packing Co., Inc.*, 314 NLRB 1042, 1043 (1994).

In this matter, neither party disputes the existence of a community of interest among employees in the petitioned-for unit. The parties so stipulated and the record, as discussed above, reveals that warehouse employees do interact with each other, perform tasks within each other's classifications and work under the same terms and conditions of employment. Thus, I find that the petitioned-for unit shares a sufficient community of interest to constitute an appropriate unit.

B. Exclusion of Distribution Employees

The Employer argues that all the drivers - BTDs, PTDs and relief drivers (dispatcher/relief driver and relief driver/warehouse) – should also be included in the unit of warehouse employees. Contrary to the Employer's assertion, application of the factors considered in determining community of interest (mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration) lead to the conclusion that there is an insufficient community of interest between warehouse employees and the drivers as to compel the drivers' inclusion in the petitioned-for unit.

With respect to mutuality of interest in wages, the record reveals that drivers receive more pay than warehouse employees. Drivers receive a minimum of \$17.00 an hour with a potential maximum of \$20.00. Warehouse employees begin at \$12.83 an hour with a maximum of \$18.20. Although both categories of employees are hourly wage earners, this fact alone does not support a community of interest finding.

The difference in working hours between drivers and warehouse employees also undermines a community of interest finding. Thus, both BTDs and PTDs have start times that precede warehouse employees. BTDs clock in at the facility no later than 4:30 a.m. and are expected to be at the HLP, another Employer facility ten miles away, loading the bulk product by 5:00 a.m. PTDs clock in at 5:00 a.m., receive their orders, load their trucks and depart the facility no later than 5:45 a.m. Thus, these drivers leave the facility before the first shift warehouse employees arrive to work (6:00 a.m.).

The other working conditions of the employees the Employer seeks to include in an appropriate unit are substantially dissimilar. Specifically, the warehouse employees perform functions related to receiving, storing and staging for delivery merchandise for customers. Drivers load the staged merchandise on their trucks (or in the case of BTDS, leave the facility to load bulk product) then depart from the facility to complete their tasks. Thus, drivers spend substantial amounts of time (estimated at 90 percent) away from the facility. Also, all drivers must have CDLs and specialized safety training on the operation of their vehicles as a requirement of their jobs – no such requirement exists for warehouse employees.

Only at the plant manager level is there common supervision for these employees. Warehouse employees are directly supervised by warehouse supervisors Gomez and Graggs, while all drivers are supervised by HDC manager Ezernack. Each supervisor conducts safety training for employees under their respective supervision.

The above discussion also reveals that drivers have different skills and functions that they perform for the Employer than do warehouse employees. Simply stated, drivers load and deliver bulk product and/or merchandise to the Employer's customers. Warehouse employees have no direct contact with customers and only maintain merchandise in the facility that will be delivered by drivers.

With respect to interaction, the record reflects there is infrequent contact between warehouse employees and the Employer's drivers. Only in cases of overtime for warehouse employees, which is not a common occurrence, is there any opportunity for there to be any contact between these two groups of employees. This is the case notwithstanding the fact they share a common locker room and main restroom.

In addition to the lack of contact between these employee groups, the record reveals there have been no transfers of employees between these two groups. This lack of contact and the lack of transfers between warehouse employees and drivers militates against the finding of a sufficient community of interest mandating the inclusion of drivers in the petitioned-for unit.

Finally, although both the warehouse and the driver delivery functions operate from the same facility, the record does not reveal they are part of an integrated operation. For example, a BTDC clocks in at the facility, but leaves the facility to collect the bulk product from the HLP. Thus, the only significant contact with the facility is that BTDCs receive their assignments from that location and submit their paperwork at the end of the day at that location.

Finally, with respect to the Employer's dispatcher/relief driver and relief driver/warehouse employee (Villanueva and Cook, respectively), the record reflects that they, too, do not share a sufficient community of interest with the employees in the petitioned-for unit as to mandate their inclusion in the unit found appropriate herein.

As noted above, Villanueva spends 90 percent of his work time on dispatching functions. He reports to the drivers' supervisor, possesses a CDL and spends the remaining 10 percent of his work time as a relief driver.

Cook, the relief driver/warehouse employee, is also supervised by the drivers' supervisor and he maintains a CDL. Although Cook may spend approximately one-half of his time working as a warehouse employee, the records reflect that his primary responsibilities are as a driver.

Accordingly, the record is insufficient to support the Employer's contention that all drivers (BTDs, PTDs and relief drivers) must be included in the unit of warehouse employees.

VI. Summary

In view of the pertinent Board law and the evidence in the record, I find that employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit and that the Employer's drivers do not possess a sufficient community of interest to require their inclusion in the appropriate unit. As described above, my decision is based on the fact that warehouse employees have different wages, hours and other working conditions than drivers; they are separately supervised; their skill level is different from drivers; there is neither interaction nor interchange between these employee groups; they perform different functions for the Employer; and the functions they perform for the Employer are not sufficiently integrated to warrant inclusion in the appropriate unit found herein. Accordingly, employees in the driver classification (BTDs, PTDs, dispatcher/relief driver and relief driver/warehouse) shall be excluded.

Based on all of the above factors, the petitioned-for unit, as amended at the hearing, is an appropriate unit.

VII. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated, and I find, that the Employer is a Delaware corporation with an office and place of business in Houston, Texas, where it is engaged in operating a warehouse and distribution facility. During the past twelve months, a representative period, the Employer purchased goods and services valued in excess of \$50,000 from points outside the State of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the Petitioner's status as a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All operators, warehouse persons, forklift operators and leadmen employed at the Employer's Houston Regional Distribution Center.

EXCLUDED: All other employees including office clerical, bulk truck drivers, package truck drivers, dispatcher/relief driver, warehouse/relief driver, technical employees, professional employees, confidential employees, guards, and supervisory employees as defined in the Act.

VIII. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or

not they wish to be represented for purposes of collective bargaining by the United Steelworkers International Union AFL-CIO, CLC.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have

access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Federal Office Building, Suite 1545, 1919 Smith Street, Houston, Texas 77002, on or before January 13, 2006. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Resident Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential

voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

IX. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST, on January 20, 2006. The request may not be filed by facsimile.

In the Resident Office's initial correspondence, the parties were advised that the National Labor Relation Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the attachment supplied with the Resident Office's initial correspondence for guidance in doing so. The guidance may also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

Dated January 6, 2006, at Fort Worth, Texas.

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director
NLRB Region 16